

EXHIBIT BE

U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONQUARION LEWIS; KE'AUJANAA

SHEPHERD-FRIDAY; and K.B.,

by and through her parent

and next friend, H.B., Case No. 1:22-cv-00838-RJJ-PJG

Plaintiffs, Hon. Robert J. Jonker

vs. Mag. Phillip J. Green

MICHIGAN DEPARTMENT OF

EDUCATION, a governmental

agency,

Defendant.

The Deposition of REBECCA A. MC INTYRE,

Taken at 525 West Ottawa Street,

Lansing, Michigan,

Commencing at 10:01 a.m.,

Monday, July 15, 2024,

Before Peggy S. Savage, CSR-4189, RPR.

1 Lansing, Michigan

2 Monday, July 15, 2024

3 10:01 a.m.

4

5 REBECCA A. MC INTYRE,

6 was thereupon called as a witness herein, and after

7 having first been duly sworn to testify to the truth,

8 the whole truth and nothing but the truth, was

9 examined and testified as follows:

10 EXAMINATION

11 BY MS. DIAZ:

12 Q. Good morning. My name is Erin Diaz, and I'm here

13 with -- representing plaintiffs, Michigan

14 Protection -- Disability Rights of Michigan. I

15 haven't done that in a while.

16 Could you please state your name for the

17 record?

18 A. Rebecca McIntyre.

19 Q. Okay. Have you ever been deposed before?

20 A. Yes.

21 Q. Okay. When were you deposed before?

22 A. It was maybe a year and a half ago for the AB/KB case.

23 Q. AB/KB case. Okay.

24 Okay. Have you ever testified at any other

25 points?

1 complaint.

2 Q. Okay. And --

3 A. In the findings of fact. I'm sorry.

4 Q. That's okay.

5 And how would you determine the root

6 problem?

7 A. In the state complaint investigation process, there
8 is -- you have to start with findings of facts, which
9 are based on interviews conducted with the district
10 and relevant staff in the district with the
11 complainant and getting information from there,
12 looking at document reviews, whatever. You know,
13 depends on what the issue was, but looking at all of
14 the documents that are relevant to the issues,
15 creating a record of all the facts in the most
16 cohesive, flowing, you know, set of events that is
17 possible, and then basing -- looking at case law and
18 rules and regulations, and determining whether there
19 was a violation in any area of those facts; and if
20 there were, what specific area, and then that would be
21 where we would assign the corrective action.

22 And I'm not talking -- it's a Child Find
23 violation, so that's -- we're just going to only look
24 at Child Find. Within Child Find, there is a whole
25 slew of -- of steps; could be regarding students who

1 correct?

2 A. Yes.

3 Q. What are integrated monitoring activities?

4 A. That would be where we are utilizing state complaint
5 data or fiscal data to inform monitoring activities.

6 We could use our ISD plans in that. So it's all the
7 different components coming together to provide
8 monitoring -- or informed monitoring.

9 Q. Okay. And under Integrated Monitoring Activities,
10 there are two bullet points. The second bullet point
11 says -- and, excuse me, these are activities that
12 could include the following: conducting interviews
13 and listening sessions with parents of children with
14 disabilities, children with disabilities, and other
15 stakeholders to learn about an LEA's or EIS program's
16 or provider's implementation of IDEA, including
17 functional outcomes and results.

18 Is that something that MDE currently
19 includes in its integrated monitoring activities?

20 A. We have a schedule of ten monitoring activities for
21 least restrictive environment this coming year, one
22 every month that our OSE leadership team is attending.
23 And, yes, we are meeting with the parent advisory
24 committee in every ISD for each of those ten ISDs.

25 Q. Okay. Just so I understood what you're saying, you're

1 requirements or suggest that there may be statewide
2 patterns of noncompliance. Where such patterns are
3 present, the State, as part of its general supervision
4 system, must determine whether systemic noncompliance
5 occurred or is occurring and ensure correction ...

6 Correct?

7 A. Yes.

8 Q. Okay. When we spoke earlier, you mentioned overseeing
9 the dispute resolution system and that it contained
10 state complaints as well as the due process hearing
11 system.

12 Are there any other parts of the dispute
13 resolution system?

14 A. Mediation.

15 Q. Okay.

16 A. IEP facilitation.

17 Q. Okay. And does the State identify patterns in dispute
18 resolution in the state compliance system and all of
19 the pieces you just mentioned?

20 A. Yes.

21 Q. Does the state ID patterns have --

22 A. Yes, we do. We look at data regularly. We utilize --
23 there are reports within Catamaran, which is where --
24 our electronic system that allows us to transfer
25 information back and forth to local districts and

1 ISDs. There are reports in there that we can pull
2 information from and look at data. And we do have,
3 you know, charts that we keep track of any districts
4 and ISDs that are getting to the threshold to meet
5 our, you know, one to three or more than -- more than
6 three state complaints to determine whether, you know,
7 we are moving up tiers in our corrective action.

8 Q. Moving up tiers in a corrective action, which part of
9 this dispute resolution system would that be part of?

10 A. State complaints.

11 Q. State complaints. Okay.

12 Okay. You mentioned data that you collect.

13 What kinds of data do you collect?

14 A. We look at -- so if we're talking state complaints, we
15 are looking at who's filing, at what level are they
16 being filed. The districts within ISD -- when I say
17 "what level," I'm talking elementary, middle school,
18 high school, transition, early childhood. Districts
19 within an ISD. We're looking at issues and issues
20 within issues. You know, the big concepts like Child
21 Find, what are the issues within -- within that that
22 are happening.

23 And then we're using that information to
24 target our technical assistance to determine if there
25 is specific guidance that needs to be developed and

1 who does it need to be developed for: a family
2 matters fact sheet for parents or something -- a
3 document or a webinar for high school staff or early
4 childhood or who -- who do we do that -- you know, who
5 needs that. It also informs whether we are going to
6 inform additional monitoring activities, which we have
7 done on a number of occasions.

8 As far as due process goes, we are looking
9 at parents that are -- when they are filing, are they
10 coming with an attorney or are they not coming with an
11 attorney, and what do the outcomes of those look like.
12 You know, is there more of an incidence of dismissals
13 or withdrawals when they're represented or not
14 represented. We're also looking at the issues; what's
15 more likely to go to due process.

16 Q. Okay. You mentioned additional monitoring activities
17 that you could order. What are you speaking to when
18 you're talking about additional monitoring activities?

19 A. So if we are investigating a complaint where we're not
20 given enough information, whether it be -- it's
21 untimely or it is -- in our opinion, we're feeling it
22 is incomplete, we will order a monitoring activity as
23 part of the corrective action, and then our monitoring
24 team will go in, along with complaint investigators,
25 and do monitoring.

1 identified noncompliance. These considerations
2 include ensuring that the correction of noncompliance
3 addresses the extent and root cause of the identified
4 noncompliance, in addition to ensuring child-specific
5 and system correction.

6 Is that what you were referring to when you
7 talk about state complaints?

8 A. Yes.

9 Q. Okay. Okay. And then page 36. So this is a
10 discussion of other important actions a state could
11 consider when previous enforcement actions have been
12 unsuccessful, correct?

13 A. Yes.

14 Q. Okay. And you can read that answer to yourself.

15 A. Yes.

16 Q. Okay. The fifth line down: One of the suggestions
17 was a state-designated management team at the local
18 level to develop and implement the policies,
19 procedures, and practices.

20 Have you ever -- has MDE ever sent a
21 state-designated management team to the local?

22 A. They're called technical -- the state -- state
23 monitor -- statewide monitors, technical assistance
24 providers. Yes, we have. And, yes, Kalamazoo does
25 have one.

1 Q. Does have one. Okay.

2 Who's Kalamazoo's team leader?

3 A. I believe it's Christy McKee.

4 Q. Okay. And what is her role as -- you said a TA

5 provider. You're saying -- your term is different,

6 but it's the same function?

7 A. Yes.

8 Q. Okay. And what did you say your term was again?

9 A. She's a statewide monitor and technical assistance

10 provider.

11 Q. Okay. Okay. And what does she do for the district?

12 A. As a technical assistance provider, she works with

13 them whenever there is corrective action that's

14 ordered; not just from dispute resolution but also

15 from monitoring. She will work with them to bring

16 them into compliance. She reviews their policies,

17 procedures. She may or may not be involved in staff

18 training. If they are coming into compliance slowly,

19 she will -- she will meet with them on a biweekly

20 basis. Generally, she will go on site for that.

21 Q. Does every district have a TA provider and statewide

22 monitor?

23 A. No.

24 Q. Okay. When does a statewide monitor/TA provider get

25 assigned?

1 I was specific in saying that they had utilized the
2 ISD's behavior consultant, because this was a student
3 who had some extreme behaviors that the district just
4 didn't know how to deal with.

5 Q. Okay. When you say you re-opened a closed complaint,
6 what do you mean by it was already closed?

7 A. It was -- it was -- a final decision was issued.

8 Q. Oh, the final decision was already issued.

9 A. So we had a 60-day time line to issue a final
10 decision.

11 Q. Okay.

12 A. It was shortly after, within days of that final
13 decision being issued, that something was brought to
14 my attention, and I reviewed the documents that were
15 present and saw that there was information that was
16 missed and should have been part of the report, which
17 would change the outcome. And so I told Teri that
18 we're here for kids, and we need to get it right. And
19 so I recommended opening it up, taking the hit for a
20 late state complaint, and reissuing a final decision
21 with better corrective action, so ...

22 Q. So in that situation, who or what entity brought up
23 the information that was missing from the state
24 complaint decision?

25 A. Well, it kind of backfired on the district. They --

1 A. Yes.

2 Q. Okay.

3 A. So for some reason, she submitted it. And the
4 progress reports don't -- the ISDs don't get those in
5 any way, so it's district to MDE. We will get it to
6 say if we are approving what they're -- where they're
7 at right now, whether it is policy development before
8 they can move on to the next step, and we said no.
9 And then they submitted a couple weeks later, and we
10 said no. And then it looks like the next day, they
11 resubmitted, and we accepted, so -- but I don't know
12 what the issue was.

13 Q. For each of those times that -- when you said no,
14 would guidance have been given to the district --

15 A. Yes.

16 Q. -- on what the issues were?

17 A. Yes. That's why I'm saying, it would be in -- like
18 this, where it says -- I'm on page 443, MDE CAP
19 Clarification/Approval Comments and then MDE
20 Verification/Closeout Comments, there's one for
21 progress reports. So they can go back and forth. And
22 I don't know if it was just blank or where that is.
23 So I can look back.

24 Q. Do you ever have districts who submit for review and
25 they have no idea what they're doing wrong when they

1 submit the information and they get it resubmitted,
2 they have to resubmit?

3 A. Well, we give them guide -- we let them know what
4 exactly is wrong with it, and then we also will offer
5 to set up a phone call or whatever to talk through
6 with them.

7 Q. To clarify?

8 A. Mmm-hmm.

9 Q. Would the ISD be part of this process? I know you
10 said progress reports go to the state only, but --
11 with the ISD. When would the ISD be jumping in?

12 A. The verification closeout.

13 Q. Okay.

14 A. So the district, when they believe that they have
15 completed everything, they submit a request for
16 verification, the ISD does that, and they write up a
17 report, submit it into Catamaran to the MDE, who then
18 reviews the ISD's report, the documents that the ISD
19 uploaded, and then they either accept it or don't.

20 And the expectation is that the ISD, if
21 they find issues, they send it back, and they work
22 with the district. So that by the time it gets up to
23 MDE, there's less back and forth.

24 Q. Okay. And how are the ISDs doing at sending it back
25 to the district if there are issues with them?

1 A. How are they doing? Through Catamaran.

2 Q. No. I mean, are they doing a good job of it?

3 A. Oh. For the most part, yes. We -- we have talked
4 about -- we're still trying to figure out how to do
5 it, but we have shared the information with the ISDs
6 that when there is inter-rater reliability issues and
7 they say -- the ISD says, "This is totally ready to
8 go," and we look at it and we go, "No, it's not," then
9 that's going to impact their determinations.

10 Q. Okay.

11 A. So we've really been trying to really work on
12 inter- -- I can't even say it -- inter-rater
13 reliability.

14 Q. Okay. And -- okay. Let's go to 58.

15 MARKED FOR IDENTIFICATION

16 DEPOSITION EXHIBIT 58

17 3:33 p.m.

18 BY MS. DIAZ:

19 Q. And this is an email about -- well, starting with
20 about State Complaint 19-0220, right?

21 A. Yes.

22 Q. And the first line says that the complaint has been
23 assigned in Catamaran to Terri, but on this --
24 probably put on the spreadsheet. Is that maybe a
25 typo? And then in McIntyre Marauders sheet, I have

1 3:39 p.m.

2 BY MS. DIAZ:

3 Q. Okay. So let's look at 64 then. This still relates

4 to 19-00- -- 0220.

5 A. I'm sorry, which number?

6 Q. Sixty-four.

7 MS. ABDNOUR: Is that your master set?

8 MS. DIAZ: Yes.

9 MS. ABDNOUR: Put this in there.

10 MS. DIAZ: Good call.

11 THE WITNESS: Okay.

12 BY MS. DIAZ:

13 Q. Okay. So 19-0220, with that state complaint, you

14 decided to do an on-site visit; is that right?

15 A. Yes.

16 Q. Okay. Why did you decide to do an on-site visit for

17 this state complaint?

18 A. Because it was systemic, because we had received a

19 number of complaints from -- from George, and we

20 wanted to see -- we kept getting different stories

21 about what the ALP program was, so we wanted to see it

22 for ourselves. So we went and took a tour and talked

23 with the staff there so we could understand what

24 everybody's understanding is of how you get in and how

25 you get out.

1 Q. Do you usually do the -- did you usually do the
2 on-site visits, or is that something that would
3 have -- let me back up and ask it a different way.

4 Would you typically accompany the
5 investigation team to an on-site visit?

6 A. I did as a learning --

7 Q. Okay.

8 A. -- and I wanted to -- I really wanted to see what they
9 did, what their process was, so that we could put
10 some -- kind of try to define it, you know, how to do
11 on-sites, so ...

12 Q. Okay. Okay. What's the typical procedure for an
13 on-site investigation?

14 A. The procedure, we'd make arrangements with the ISD
15 ahead of time, and we set up a schedule. They have --
16 we let them know how many files we need them to pull.
17 So we might say we need 50 -- 50 files, and then we
18 randomly select out of those files. So we'll sit and
19 do file reviews. We walk the -- the in-question
20 program. We talk with staff, do interviews. We write
21 up some recommendations, and then we will kind of
22 debrief with the -- with the director before we leave,
23 and then that's kind of it. The rest goes in our
24 final decisions.

25 Q. Would you interview students or parents during this

1 MS. DIAZ: Yeah, let's take a break for a
2 second. Go off the record.

3 (Off the record at 3:51 p.m.)

4 (Back on the record at 4:06 p.m.)

5 MARKED FOR IDENTIFICATION

6 DEPOSITION EXHIBIT 8

7 4:07 p.m.

8 BY MS. DIAZ:

9 Q. Okay. Exhibit 8 was the decision for 19-0220.

10 Okay. And the decision is on page 37. MDE
11 determined there was a violation for Child Find
12 obligation to locate, identify, and evaluate
13 students -- the student named in this complaint. And
14 then in regards to similar-situated students, the
15 determinations were unclear due to the incomplete
16 nature of the students' files, and that would be
17 addressed through district-level corrective action.
18 Is that right?

19 A. Yes.

20 Q. Okay. And then I think you had referred to this
21 actually earlier, that CA-60s were incomplete. So
22 that was part of the corrective action that was
23 required?

24 A. Yes.

25 Q. Okay. And that was for each student who worked -- who

1 was attending the alternative middle school in
2 February of 2020 -- or by February of 2020, excuse me.
3 They had to go through and ensure that the
4 documentation was present.

5 From what you understand, did the
6 documentation exist in an e-system rather than a hard
7 copy?

8 A. I don't know that.

9 Q. Okay. If the documentation existed in a different
10 format, would that have fulfilled the requirements of
11 this? I guess would this have been ordered if the
12 documentation actually did exist, just in a different
13 format than a paper file?

14 A. So there are requirements for CA-60s to contain
15 certain information, and that --

16 Q. Okay.

17 A. -- information is what would be used to look at Child
18 Find checklists and look at the history of a student.
19 So I would say no.

20 Q. Okay. And by definition, does the CA-60 have to be a
21 paper file?

22 A. I believe, yes.

23 Q. Okay. Okay. And then on page 38, by March of 20- --
24 March 20th of 2020, the district had utilized a Child
25 Find checklist provided by MD- -- sorry. We're still

1 on -- still on Exhibit 8, last page.

2 A. Okay.

3 Q. The district was supposed to utilize a Child Find
4 checklist provided by MDE for each of the students
5 attending the middle school.

6 A. Yes.

7 Q. Okay. From your understanding of the way that middle
8 school worked, did students move in and out of the
9 middle school during the school year?

10 A. Yes.

11 Q. Okay. Would this requirement in using the Child Find
12 checklist have followed that child out of the middle
13 school if they had already transferred out during that
14 school year?

15 A. Can you repeat another way?

16 Q. Yes. I'll rephrase it.

17 If a student had already left that
18 program -- a student was attending the program during
19 this year, during the time the eval- -- or during the
20 time the investigation was taking place, that student
21 had transferred out prior to this decision, would the
22 district have had to track that child down and utilize
23 this Child Find checklist for that student?

24 A. We received -- I would say yes. We had received or
25 asked for a list of all the students. So we had a

1 BY MS. DIAZ:

2 Q. Okay. And then let's look at 73 -- oh, I think we

3 already talked about that. Let me check.

4 No, let's look at 73, and then 37 of it.

5 MARKED FOR IDENTIFICATION

6 DEPOSITION EXHIBIT 73

7 4:31 p.m.

8 BY MS. DIAZ:

9 Q. This is a SEAC New Member Orientation from September

10 of 2020, slide deck, and page 37 talks about

11 administrative law judges.

12 Do you recall if you would have presented

13 this information at SEAC?

14 A. Yes.

15 Q. Okay. And it says that there's certain requirements

16 for ALJs, and one of them is that they possess

17 knowledge of an ability to understand the provisions

18 of IDEA, federal and state regs pertain to IDEA, legal

19 interpretations of IDEA by federal and state courts,

20 conduct hearings in accordance with appropriate

21 standard legal practice, and render and write

22 decisions. Correct?

23 A. Correct.

24 Q. Okay. How does MDE know that the ALJs possess the

25 knowledge and ability to do those things?

1 A. We provide them training annually, and that's part of
2 looking at the final decisions, sharing final
3 decisions with SEAC, and getting input.

4 Q. Okay. What training do you provide to ALJs annually?

5 A. We would have to look back at the record. Each year
6 it's different. They used to go to Lehigh, go to LRP.
7 Last year they received a two-day training from
8 Pingora. They just received a two-day training again
9 from Pingora, as well as they've attended CASE -- I
10 think it was CASE and CADDRA.

11 So we're trying to provide them as much --
12 the Pingora trainings are Michigan specific, because
13 we have told them, you know, that Lehigh, LRP, CADDRA,
14 those are all from a national perspective and topic
15 specific, where we need process specific.

16 Q. Okay. So you provide the trainings for the ALJs. Is
17 there any assessment done to determine what they've
18 learned through those trainings?

19 A. Assessment, I think, plus watching the data.

20 Q. Okay. How does watching the data determine whether or
21 not they've learned?

22 A. Because there's topic-specific information that they
23 are learning, and then we watch the data to see that
24 there's progress.

25 Q. Okay. What does it actually mean to watch the data?

1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF OTTAWA)

5

6 I, PEGGY S. SAVAGE, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing questions
9 and answers were recorded by me stenographically and
10 reduced to computer transcription; that this is a
11 true, full and correct transcript of my stenographic
12 notes so taken; and that I am not related to, nor of
13 counsel to, either party nor interested in the event
14 of this cause.

15

16

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21

22 PEGGY S. SAVAGE, CSR-4189, RPR

23 Notary Public,

24 Ottawa County, Michigan.

25 My Commission expires: 7-13-25